IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

LISA JONES, et al.,	)	
	)	
Plaintiffs,	)	**No. 19-00102-CV-W-BP**
	)	**March 11, 2021**
V.	)	**Kansas City, Missouri**
	)	**CIVIL**
MONSANTO COMPANY,	)	
	)	
Defendant.	)	
	)	

TRANSCRIPT OF FINAL SETTLEMENT HEARING
(PARTIES APPEARING BY VIDEOCONFERENCE)

BEFORE THE HONORABLE BETH PHILLIPS
UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

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MARCH 11, 2021

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(The following proceedings were had in the courtroom with all parties appearing by video.)

THE COURT: We're here today on Jones, et al. versus Monsanto, et al., Case No. 19-102.

We're here today on a class action -- motion to approve a class action settlement. I know that you kind of entered your appearance before I came in the room here, but for my purposes, could the attorneys who are representing the plaintiff and who intend to speak today enter your appearance and let me know who I should refer to when having questions of plaintiff?

MR. BINKLEY: Good morning, Your Honor, this is Clark Binkley for the plaintiffs.

MR. RICHMAN: And Kim Richman assisting Mr. Binkley today. Good morning, Your Honor.

THE COURT: Thank you. And for defendants? Who will be primarily speaking behalf of defendants?

MR. ROSENTHAL: Good morning, Your Honor. It's John Rosenthal from Winston & Strawn. I'll be handling the argument, but Mr. Wilkerson may be jumping in at moments where I need help.

THE COURT: Okay. And for the objector, Miss St. John?

MR. SCHULMAN: Good morning, Your Honor. Adam Schulman for Objector St. John; and I have local counsel, Jonathan Whitehead, with me.

THE COURT: Okay. Thank you.

Well, I have reviewed the various filings made by the parties, including the response that was filed, response to the objection that was filed earlier this morning. As a result, I have a few questions of counsel that will help the decision that I'm going to be making in this case. PI then will open it up to any brief comments or arguments that any counsel wishes to make. In the interests of saving time, I would ask that you not just restate the arguments in your briefing. I have read all of the briefing, and, after receiving answers to some of the questions I have, we'll go back and read the briefing again. So I don't think that that will be an efficient use of anyone's time. But to the extent any counsel wishes to either highlight one or two points briefly or expand on some issue, I'll be open to hearing that after I ask some of these questions.

So the first question I have is of plaintiff's counsel, and that goes to the objection regarding the notice. I know that in the affidavit, I believe, of Mr. Schwartz, you indicate that the -- he states -- in Paragraph 27 of the most recent exhibit that was dated February 25th, he states that the reach of the notice was 80 percent with an average frequency of

2.28.

My question deals with -- and this may be somewhere in the, all of the information that has been provided in this case. But my question is, No. 1, I think I know what is meant by reach, but could you expand on what reach is or how reach is defined? I also think I know what average frequency is, but if you could expand on that. And if you could let me know what the -- you believe the size of the class to be and, therefore, what 80 percent means in terms of the -- if that's related to the size of the class.

With that, Mr. Binkley?

MR. BINKLEY: Thank you, Your Honor. As I understand it, frequency refers to the number of times that any given class member will see an impression. So the frequency as to that, that we got in this case after running notice was that each class member would have seen more than two impressions on average.

Frequency is an estimate of -- sorry. Reach is an estimate of the percentage of the class that would have seen any impressions across all different forms of the notice.

We do not have a set number for the class because there is no -- there's no entity that tracks the exact number of consumers who have purchased the products. We had data on how many products were purchased, and from that we were able to extrapolate that the class does number in the millions, but we

cannot get an exact number for how many people purchased because many people purchased more than a single product.

THE COURT: So you do know that there were within the appropriate time frame -- or relevant time frame that there were millions of products sold?

MR. BINKLEY: That's correct. We do also know, I should note, that the reach and frequency estimates translate to hundreds of millions of impressions.

THE COURT: And then the 242,000 valid claims, then, is going to be a fairly small percentage of the entire class; is that a fair statement?

MR. BINKLEY: Based on revenue, we would estimate that the claim share would be somewhere around 2 or 3 percent.

THE COURT: Two or three percent?

MR. BINKLEY: Which is in the typical range for claims rates, yes. Typically, we see claims rates of 1 to 5 percent in settlements regarding these types of retail false advertising cases. So that is within that range.

THE COURT: So in light of the objector's objection, have you done any additional investigation as to whether -- whether additional notice is possible, the cost of additional notice, the reference that the objector makes to subpoenaing records from big-box retail locations, actions or steps of that sort?

MR. BINKLEY: We have considered all of those

options, not just after seeing objections, but, of course, earlier in this process.

As you know, Your Honor, we've revised the settlement already. The parties took very seriously their concerns over how much of the distribution would end up in the hands of consumers versus what was left over for cy pres. And after running the initial notice, even though it's already exceeded reach and frequency targets and resulting in a claims volume that was consistent with same and similar class action settlements, we did revise the settlement itself and also the notice plan, and we incorporated new forms of notice.

As we revised the original notice plan, one of the things that we did was purchased a list of likely or possible consumers of Roundup based on internet search history data, for example. This was an overinclusive list, this was very broad, but we purchased this list and then contacted everyone on the list directly.

And so this was already overinclusive, and in our conversations with the claims administrator, we concluded that this was actually more effective than seeking subpoenas from retailers who have increasingly imperfect data. Especially with ongoing privacy concerns, retailers -- major retailers are now getting rid of a lot of that data, they're not holding on to it in the way that they used to. They, of course, aren't tracking people who make purchases with cash and, of course, it

would not include people who purchased from smaller retail outlets. So it was our conclusion that that would not have been a most effective form of updating notice and that the steps that we already took were, in fact, more effective.

THE COURT: The next topic I have questions on is the amount of damage that is -- that each class member experienced and the conclusion that the loss was approximately 50 percent. I think that these questions may be better directed to counsel for Monsanto, but to the extent I'm incorrect and, Mr. Binkley, you have an answer, feel free to chime in.

Can you explain to me a little bit more as to how the conclusion was drawn that the loss to each of -- each class member was approximately 50 percent, as opposed to some higher number?

MR. ROSENTHAL: Yeah, if you don't mind, Clark, I'll take that.

Good morning, Your Honor, it's John Rosenthal for Monsanto.

We actually believe the actual damages are substantially lower, if not nonexistent here. The consumer class case -- in consumer class cases, typically what's done or what the plaintiffs originally in the context of the *Blitz* case, which was the related case where they attempted to get class certification and that was denied, they put forward an

expert that said that they would do a choice-based conjoint study.

There are criticisms about whether it's appropriate, but we took that and actually ran our own conjoint study for purposes of all the mediation here. And what that study does is essentially takes the product with and without the claim statement and tests that against consumers in a way so it can determine whether or not there's any price premium associated with the presence or absence of the statement.

And here, we retained the Analysis Group and Dr. Kristina Shampanier, who did the conjoint study and found that there was no statistical difference between the product with and without the challenge statement here. In other words, there's no damages.

Now, in the study, she went on to look at worst case scenario and said that worst case, worst case, even though there's no statistical relationship, the damages would be on the upward end of 2.5 percent of the overall purchase price of the product.

Now, plaintiffs, they did their own study in preparation for the mediation here, and they did not do a conjoint study, they'll be the first to admit that. They did more of a trademark survey study. Monsanto maintains that that study in and of itself would probably not be admissible in court, at the end of the day it wouldn't pass Daubert muster.

But with that qualification, they found that a range of the price premiums here would be between 7.9 and 15.9 percent. So we're at 2.5 in terms of -- well, we're actually zero damages. Worst case scenario, 2.5. At the upper end, plaintiffs are worth -- are at 15.

The original settlement agreement provided for that the payment would be 10 percent of the weighted average retail price. And after notice and when the notice -- well, we came back to Your Honor and said that we would like to put in an escalator. In other words, the parties still believe the damages are, the actual damages are actually well below 10 percent, and Monsanto believes that we gave a multiple of damages here, four times the actual worst case scenario damages. But the parties agreed they would escalate damages based upon the claims of up to 50 percent, and that's how we get to the 50 percent number. So we don't -- I don't think either party believes the 50 percent reflects actual damages. They believe it reflects multiples of worst case scenario actual damages that can be claimed at trial.

THE COURT: Okay. Thank you. I think, Mr. Rosenthal, you also may be the best person to ask the next set of questions that I have, which goes to the declaratory relief and the change in the label.

I'm interested in, just generally, as the objector raises, whether or not the change in the label, the agreement

to change the label is an actual benefit to the class and to the consumers, and I think some of the issues that may be related to that are whether or not Monsanto intended to change the label anyway before the lawsuit, if there are any labels that are still in existence. If you're still using the label, for example, if you will require -- will submit the new label for EPA approval, things of that sort.

So, Mr. Rosenthal, to the extent that you're the most appropriate person to answer this question, can you explain to me why Monsanto believes that this is an actual benefit to the class?

MR. ROSENTHAL: Yeah. So unfortunately, I am the person to answer that question.

I would say for us it's a double-edged sword. We don't believe the statement at the end of the day is misleading. We believe the statement has been approved for over two decades by the EPA, and the EPA has never indicated in any way, shape, or form that the statement rises to the level of misbranding, in other words, it's misleading.

With that said, we do think anytime there's a question where our customers or potential customers could potentially be confused or raise a question and we can clarify that, that's a benefit to consumers here.

And to that end, there was a parallel process here, the parallel process being that there was a regulatory process

in which we were engaged in discussions with the EPA regarding the statements and the change of that statement to drop the people-and-pets language at the same time we were in discussions with the plaintiffs.

So I would say it was a parallel process. Certainly plaintiffs' efforts contributed to that; but overall, the label is controlled by the EPA, the EPA mandates the label here, and any change has to be done with their approval, and we pursued the approval process in parallel.

And the way this works is there's a master label for each product, and we have to make an application for the master label to make the change. That process has started, and we have already several labels that where the master label has been changed, which then gives us a reasonable time period to use the inventory to switch out to the new label, and then the process of making this change with the additional labels is a process that will take several more months because we're talking about multiple packages here.

So the process is well on its way, but under the EPA regs, we have a right to use the reasonable inventory, and we have a reasonable period to change. But at the end of the day, I do believe that the class obviously helped with the movement and the timing of this, but I would have to say it's a parallel process, and ultimately, you know, the EPA has primary jurisdiction here over the label, the contents of the label.

THE COURT: Okay. Thank you.

I need to go back to the notice issue, and, Mr. Schulman, I forgot to ask you some questions on that issue. Could you explain to me, given the extensive notice that was done, given the -- what would expect to be the difficulty, what I would expect to be a difficulty of getting specific consumer information from big-box retailers, your position on what additional notice should take place in this particular settlement.

MR. SCHULMAN: Well, I want to make clear that it wasn't a notice, per se, objection that we were raising. We were raising that as an alternative possibility to get further funds to the class, and, you know, we cited a number of cases where that's used.

It's not always just used as a matter of sending notice. In fact, a lot of cases use that information that they subpoena to send direct payments to the class member via Venmo or PayPal or some other very cheap method of transmitting electronic claims.

So once they have that information, they wouldn't -- they would already know that those class members are eligible for claims. There wouldn't be any need for them to go through the claims process itself. So I just wanted to make that clear.

THE COURT: Okay.

(Unintelligible cross-talking.)

THE COURT: And with respect -- let me ask one more -- let me ask one more question of Mr. Schulman.

Then on the damages, you don't have any evidence to suggest that the damage to the class members was greater than 50 percent of the purchase product; is that an accurate statement?

MR. SCHULMAN: The problem with that is there was no -- the only agreement that the price premium is a proper measure of damages is an agreement that the parties came to at settlement. We quote from the relevant passages of the complaint where the plaintiffs ask for full refunds because they argue that they wouldn't be -- they wouldn't have purchased the product otherwise.

And that has been -- there is a case out of the Southern District of California last year that accepted that. They don't need -- to get a full refund, it's not absolutely necessary, according to this case, that you claim that the product is valueless, just that you wouldn't have purchased it, and they make those averments in their complaint. And now they're trying to have -- they're trying to settle on this price premium method, but it's only for the purpose of settlement. It's not as if they lost the other measure at the motion to dismiss stage or anything like that, and that's the problem under *BankAmerica*. *BankAmerica* doesn't allow the

settling party to do that.

THE COURT: Okay. Thank you.

I think someone tried to jump in. Was it Mr. Richman?

MR. ROSENTHAL: No, it was Mr. Rosenthal.

THE COURT: Oh, Mr. Rosenthal.

MR. ROSENTHAL: I have a problem with jumping in.

A couple of things. One, back to the notice. And, you know, as the Court is aware, the standard here isn't perfect notice, the standard is reasonable notice here, and we believe that the notice here has been more than reasonable when you look at not just the notice plan, but there was an original notice plan, there was a supplemental notice plan, there was an updated notice plan, and when we changed those notice plans, we came back to the Court to advise the Court what we were doing here.

There's been an incredible -- you know, in terms of the breadth and cost here of the notice plan, *Better Homes & Gardens*, 431 million digital impressions, 80 million impressions on digital ads, 7.2 million impressions via streaming radio, sponsored search advertisements for 650,000 impressions, direct e-mail notices to 3.8 million people. This has really been quite the robust notice here.

Now, with respect to the retailers, could we go to the retailers and subpoena them and get potentially some more

direct notice names? Possibly. I would tell you, the world has really upended itself in the last year or two, particularly with the California CCPA that now places all kinds of limitations on what retailers can do with their customer data. So retailers are very resistant to do that, and they're not -- many take the position they legally can't do that. Obviously, if they had a court order, that might change it. But we don't believe at the end of the day getting that will materially change that.

We have talked to P&N here, the administrator, and we've asked them that question point blank over the last several days, and their position is they do not believe that the numbers would materially change.

They did -- we did also ask them for an estimate if we did that, assuming we could get the information, and, again, they don't -- you know, based upon their experience, they're not sure we could readily get that information, but they're looking at an average cost here between 300 and $600,000, and it's their view that that would not be worth the investment because of the return there.

The last point I would just make is moving to *BankAmerica*. I mean, we dispute strongly the objector, Miss St. John's view of what *BankAmerica* says and does not say. We think the law is clear that you don't look at the total purchase price in terms of whether somebody has been 100

percent compensated, you look at their reasonable claim of damages; and the reasonable claim of damages, by any measure, if you look at the current complaint, at the allegations in the current complaint, it is some form of a price premium measure here. And, you know, I've already reviewed with the Court what both parties' findings were, and here at 50 percent, we're at multiples above a 100 percent claim of reasonable damages.

THE COURT: So let me change subjects here to the last topic that I have questions on, and that is the attorneys' fees.

I do believe that it would be appropriate for me to review the billing in this case and would ask that counsel submit the billing in camera. I think that raises another issue, however, of the extent -- I know this was three different cases originally that were combined into one for purposes of settlement, and I'm open to suggestions.

My first thought is that the billing in this case should be submitted separately, and then the billing for the three combined cases, which I assume is going to be plaintiffs' counsels' ultimate argument, should be submitted.

But does -- let's see, who is here on behalf of -- Mr. Binkley, do you have any thoughts on that?

MR. BINKLEY: Yes, Your Honor. We are, of course, happy to submit records in camera for review. We believe that it is supported in the case law of this circuit that the

percentage-of-the-fund analysis is appropriate, with or without any kind of lodestar cross-check; but if the court feels that is appropriate to take a look at our time records in camera, we certainly don't object to that.

Regarding the other cases, I believe this is all in the moving papers so I won't belabor the point too much, but significant work was done in the earlier cases. That is where most of the discovery was conducted, including the production and review of thousands of documents and costly expert discovery, and the parties agreed early on when this case was filed to use that discovery in this case. This case could not have been litigated without that discovery, we could not have mediated without having that discovery in hand, so it is essential.

That said, we, of course, will submit the records for each case, separated and delineated by case.

THE COURT: Okay. Thank you. Do you think it's reasonable to do that within the next seven days?

MR. BINKLEY: I believe so, Your Honor. Would you -- would you be expecting anything beyond the time records themselves?

THE COURT: I'm sorry. I didn't hear you.

MR. BINKLEY: I'm sorry. I was asking if you would like a written submission beyond the time records themselves.

THE COURT: I think at this point, the records

themselves would be sufficient. I don't think that any type of written submission would be necessary.

MR. BINKLEY: Understood.

THE COURT: Well, those are the questions that I have. I recognize that the parties have disputes regarding the law that's applicable and the interpretation of the various cases that were cited. I will commend the parties, I think that the briefing on these issues is very good, and I think I understand the legal arguments that the parties are making.

But since we have a little bit of extra time, Mr. Binkley, are there any issues that you would like me to -- or that you would like to discuss at this time? Again, I'm familiar with the briefing, but I will give you the opportunity to make a brief argument, if you wish.

MR. BINKLEY: Thank you, Your Honor. First, I would like to go back to the point about the value of the label change to the class. We think this is significant. This is beneficial to the entire class and to the general public. It is also something that goes beyond what was even available in the best case scenario, had we litigated this case to its completion.

As the Court is well aware, we have some issues that would have precluded the parties who were seeking this as actual relief in litigation, but we nevertheless entered into settlement. Monsanto maintained that there was a parallel

process here to change that label after the case had begun before the settlement.

It's important to note that the settlement is binding. The settlement ties Monsanto to removal of this label. Absent the settlement, there would be nothing stopping Monsanto from, perhaps, bringing it back another time. It would have to go through EPA approval, but this settlement ensures for the class that that cannot happen.

So we do want to emphasize that that is of very real value to the class.

THE COURT: Okay. Thank you very much. And Mr. Rosenthal, is there -- are there any points that you would like to briefly raise?

MR. ROSENTHAL: I would just like to point out, Your Honor, I mean, this is a statement that has been on our labels for quite some time, and it is a statement that was approved by the EPA. We don't believe that it is misleading. It describes how the products work and the product describes a metabolic pathway that's in plants and some microorganisms, and it's not in the human cellular or animal cellular structure.

You know, if this went forward, we think it's highly unlikely that they would get any kind of a national class on the merits. They might be able to get some classes in particular states, but there is substantial risk going forward; and even if they can get a class, we have substantial defenses

on the merits, as well as this is not a good damage case for the plaintiffs, and we don't have to speculate that because we've already done the work here.

So when we look at the benefits here to the class, there are substantial benefits to the class here, and this -- by any measure of a consumer class action, this is a fair and reasonable settlement, and you just need to look at prior Eighth Circuit precedent like the *Keil* case where they note that, you know, claims raised in these kind of consumer class actions are typically low, and they're on the order of 3 percent or lower.

I may have a comment or two after we hear from the objector.

THE COURT: Mr. Schulman, do you have any arguments or brief issues you'd like to raise?

MR. SCHULMAN: Thank you, Your Honor.

I'd like to address some of the things that were in Monsanto's filing this morning, but before I do that, can I ask if you'll allow us the opportunity to respond -- to address plaintiffs' lodestar submissions? I heard that you are demanding -- or asking for them in camera, but we'd like the opportunity to object to it, if you'll allow it.

THE COURT: I'm not inclined -- I think that they are attorney-client privileged materials, so I'm not inclined to give you all of the billing records. To the extent

Mr. Binkley -- well, to the extent, Mr. Schulman, you have some suggestion as to how they could be provided in a way that doesn't violate attorney-client privilege, I'm happy to hear that argument.

MR. SCHULMAN: Well, we certainly wouldn't object to -- there's actually -- we've briefed this issue before. There's certainly some allowance for minor redactions for attorney-client confidences; but by and large, an adversary in this type of situation, which we are since we're a class member and they're seeking fees from the common fund, would be entitled to review the majority that shows their entry, but -- or at least -- the very least, given that they're seeking a percentage, there should be some lodestar summaries available to class members who would like to object.

THE COURT: Mr. Binkley, if you -- you know, I'm sympathetic to the defendant's -- or to the objector's arguments that they're entitled to some information. As I've mentioned, I'm also sympathetic to the argument that it's, as I mentioned, attorney-client, but maybe even arguably more work product.

So do you have any thoughts on how you could provide the objector with information regarding the fees that would not violate either of those or other privileges?

MR. BINKLEY: Your Honor, I don't believe that this would be appropriate, regardless of how we provide it. This is

simply not necessary for the objector to see. And the Eighth Circuit has already established that a check of lodestar is only necessary when there is actual reason to believe that the fee award under a percentage-of-the-fund analysis would be overly generous. This is the *Petrovic v. Amoco Oil Company* case from the Eighth Circuit. While it is sometimes warranted to double-check the percentage-of-the-fund method, it's not necessary. We think it's not necessary.

We think it's going far and above and beyond the type of in camera double-checking that the Court is proposing here to actually have this -- these time records analyzed by the objector, and the objector has not actually raised any real reason to doubt that our request for 25 percent of funds, which I know is at the very bottom of the usual range in the Eighth Circuit, they have not given any reason as to why that needs a full cross-check.

THE COURT: Well, I'll be honest. I haven't had this issue raised before me before.

So, Mr. Schulman, you mentioned that you had briefed this issue in the past. Why don't within the next seven days you file a motion with your request; and, Mr. Binkley, if within seven days of that motion you could respond, I will then make a ruling as to the records that need to be supplied to the objector.

Mr. Binkley, if in the meantime you could go ahead

and provide the records in camera, I think that would be helpful to ensure the process moves forward, and then we will at the same time determine what, if any, records Mr. Schulman and his client are entitled to.

Mr. Schulman, in addition to the fee information, were there other issues that you wanted to briefly discuss?

MR. SCHULMAN: Thank you, Your Honor, yes.

So the bulk of the defendant's response I view to be an interpretation of *BankAmerica* that is just belied by the explicit text of *BankAmerica*. It's not as if -- *BankAmerica* in our view is crystal clear. It doesn't just say once that you may only find a windfall when -- to find a windfall, you must find that class members with liquidated damages were 100 percent satisfied by the initial distribution, it also reemphasizes that another time by separately saying it is not true that class members with unliquidated damage claims in the underlying litigation are, quote, unquote, fully compensated by payments of the amount allocated to their claims in the settlement. And that's exactly what you have here.

So I don't think that -- you know, the language in the text of *BankAmerica*, the holding, that's what binds this Court, it's not that they cited an out-of-circuit case that happened to allow an unliquidated damage claim and they found a windfall in that case.

Monsanto also pointed to an earlier Eighth Circuit

case, *Powell v. Georgia*, which we didn't raise, but that case was not about windfall whatsoever. It was -- that case permitted a residual to go to cy pres because it would be, quote, extremely difficult to distribute the funds pro rata because over a decade has elapsed since the initial distribution. It had nothing to do with how to evaluate whether additional recovery would be a windfall.

BankAmerica is the applicable precedent. And that wasn't changed by the *Rawa* case two years ago either because that case -- in that case, the objector wasn't challenging the underlying cy pres settlement, according to the Eighth Circuit and according to the Eastern District of Missouri, it was challenging the fact that the court didn't unilaterally shift excess funds to the class rather than as the settlement stipulated, and we concede that the court doesn't have that unilateral authority, that the parties need to amend the settlement to fix it.

THE COURT: Okay. Thank you.

(Audio distortion.)

MR. SCHULMAN: Those are the major issues.

(Audio distortion.)

THE COURT: I'm sorry. We didn't hear anything that either of you just said.

Mr. Schulman, did you have something that you were saying?

MR. SCHULMAN: I was just saying those were the major issues.

The only other very small thing was that Monsanto in a footnote said that removing the unit purchase caps would encourage fraud, and I would refer Your Honor to the *Baby Products* case in the Third Circuit that rejected that rationale for preferring cy pres.

THE COURT: Okay. Mr. Rosenthal, did you have a brief rebuttal that you wanted to make?

MR. ROSENTHAL: Very brief.

First of all, I just have to look at the *Rawa* case where we did experience substantial fraud, and that was noted in the court and in the argument.

I would say going back to the other point, there can be no fair reading in terms of what the plaintiffs are suggesting *BankAmerica* says or doesn't say. This issue was directly at issue in the *Rawa* case. I did an oral argument before the Eighth Circuit. The Eighth Circuit actually raised this issue directly.

Now, why they didn't clarify it in their opinion, what they did do is they approved a cy pres award in a case that's not liquidated damages. You can look at the history here. *BankAmerica* got the liquidated damages reference off the *Klier* case. The *Klier* case had multiple subclasses, which only one of the subclasses had a claim for liquidated damages, and

that's where that was picked up, and then picked up again in *BankAmerica*.

But if you look at the decision before *BankAmerica*, *Powell*, if you look at the decision after the *BankAmerica*, *Rawa*, if you look at the other circuits that have spoken on this issue, there's no limitations for liquidated damages. And indeed, it would not make any sense to limit cy pres awards to contract cases, and it would not make the cy pres doctrine available in other types of cases. It just logically does not make any sense.

I would suggest that if the Eighth Circuit had an issue or really thought that it's bound by plaintiffs' reading of *BankAmerica*, then they would not have ruled the way they did in the *Rawa* case.

THE COURT: Thank you. I think that I have all of the information I need. I will await the briefing on the sharing of the fee information with the objector, but at the same time will do a cross-check on the fees myself.

I will take this information, review all of the briefing again and will take the matter under advisement, but hope to get an order out in the somewhat near future.

If there's nothing further, then thank you all for coming in, and that will conclude this proceeding.

MR. ROSENTHAL: Thank you, Your Honor.

MR. RICHMAN: Thank you, Your Honor.

MR. SCHULMAN: Thank you, Your Honor.

MR. WILKERSON: Thank you, Your Honor.

(Hearing adjourned.)

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CERTIFICATE

I certify that the foregoing transcript of proceedings heard by the Court via videoconference is correct to the best of my ability due to limitations of the technology used.

March 15, 2021

/s/_____
Kathleen M. Wirt, RDR, CRR
U.S. Court Reporter